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State of South Carolina  
Department of Revenue  
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

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SC PRIVATE REVENUE OPINION #00-4

SUBJECT: Transfer of Property to a Single Member Limited Liability Company  
(Sales and Use Tax)

REFERENCES: S. C. Code Ann. Section 12-2-25 (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (Supp. 1999)  
SC Revenue Procedure #99-4

SCOPE: A Private Revenue Opinion is a written statement issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. **A Private Revenue Opinion does not have the force and effect of law, and is not binding on the person who requested it or the public.** It is, however, the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Question:

Based upon the facts below, is the contribution of substantially all of the assets and liabilities of ABC, Inc. to a newly formed single member limited liability company, treated as a division of ABC, Inc. for federal and South Carolina income tax purposes, subject to South Carolina sales tax?

Conclusion:

Based upon the facts below, the contribution of substantially all of the assets and liabilities of ABC, Inc. to a newly formed single member limited liability company, treated as a division of ABC, Inc. for federal and South Carolina income tax purposes, is not subject to South Carolina sales tax.

Facts:

ABC, Inc. ("ABC") is a North Carolina corporation that owns or leases and operates retail stores, and owns and operates distribution centers, truck fleets, and administrative offices in South Carolina and surrounding states.

ABC is considering contributing substantially all of its assets and liabilities to a newly formed single member limited liability company (“LLC”). The single member LLC will be treated as a division of ABC for federal and South Carolina income tax purposes. There will not be a change in ABC officers or ownership structure. The contribution of assets will likely occur over a twelve or thirteen month period on a state by state basis.

Discussion:

Code Section 12-2-25 provides definitions pertaining to limited liability companies and provides:

Single-member limited liability companies which are not taxed for South Carolina income tax purposes as a corporation...will be ignored for all South Carolina tax purposes.

South Carolina follows the federal tax treatment of limited liability companies. Based upon the federal rules and Code Section 12-2-25, if a single member LLC does not make a federal election to be taxed as a corporation, it will be disregarded for all tax purposes and treated as a division of the corporation if owned by a corporation.

Based upon the facts presented, the single member LLC will be treated as a division of ABC for federal and South Carolina income tax purposes. Accordingly, the contribution of substantially all of the assets and liabilities of ABC to a newly formed single member limited liability company, treated as a division of ABC for federal and South Carolina income tax purposes, is not subject to South Carolina sales tax.

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer’s facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Elizabeth A. Carpentier  
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Elizabeth A. Carpentier, Director

July 10 \_\_\_\_\_, 2000  
Columbia, South Carolina